dence than upon a motion to set aside a verdict, the appellate court will only consider the action of the court upon the demurrer to evidence.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 576, 578.]

4. Master and Servant (§ 101, 102 (5)*)—Servant's Injury—Machinery—Custom and Usage.—An employer was not liable for his experienced servant's injury, sustained while tarring machinery, where machinery conformed to that in general use in similar plants, and the danger was incident to the work itself, rather than the failure to supply a safe place to work.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 674, 680.]

5. Master and Servant (§ 101, 102 (2)*)—Servant's Injury—Liability of Master in General.—Employers are not insurers of their employes safety, and are liable for the consequences, not of danger, but of negligence.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 674, 675.]

6. Master and Servant (§ 278 (20)*)—Servant's Injury—Duty to Warn—Sufficiency of Evidence.—Evidence held insufficient to show employer's duty to warn an experienced employee as to danger of tarring machinery; employee not having been directed to tar, but to oil, the machinery, and employee being aware of sticky quality of tar in cold weather, and dangerous character of machinery itself being perfectly obvious.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 725.]

7. Master and Servant (§ 88 (4)*)—Servant's Injury—Volunteers.—An employee, injured while tarring machinery, had no legal cause of complaint, where he was only directed to oil machinery.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 668.]

Error to Circuit Court, Washington County.

Action by John A. Wadkins against the Damascus Lumber Company. Judgment for defendant on demurrer to evidence, and plaintiff brings error. Affirmed.

L. P. Summers, of Abingdon, for plaintiff in error.

Hutton & Hutton and *White, Penn & Penn,* all of Abingdon, for defendant in error.

RINER *v.* LESTER.

Sept. 20, 1917.

[93 S. E. 594.]

1. Vendor and Purchaser (§ 166*)—Delivery and Acceptance—Effect.—If there was a valid delivery and acceptance of deed from

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

vendor to purchaser containing an exception and thus conveying less land than had been agreed upon, and purchase-money bonds were given in accordance therewith, the purchaser was concluded from questioning her liability.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 541.]

2. Evidence (§ 460 (5)*)—Parol Evidence Affecting Writing—Sale of Land—Quantity.—In a vendor's suit to enforce his lien, testimony of the purchaser's husband that the vendor stated that the original survey of the land was 111 acres, and that, with 3 acres which had been cut off to the purchaser of the land expressly excepted from plaintiff's deed, the purchaser would get 108 acres, was not inadmissible as violating the rule against the use of parol evidence to vary the terms of a written contract.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 672; 14 Va.-W. Va. Enc. Dig. 1055.]

3. Vendor and Purchaser (§ 64*)—Contract—Reference to Prior Deed—Knowledge of Boundaries.—The purchaser of land was charged with knowledge of its boundaries as described in the deed from the vendor's father to the vendor; such conveyance being referred to by the contract of sale as identifying the land.

[Ed. Note—For other cases, see 13 Va.-W. Va. Enc. Dig. 499.]

4. Vendor and Purchaser (§ 177*)—Existence of Incumbrance.—Mere knowledge of an incumbrance at the time of contract of sale, and the mere taking possession of the land with such knowledge, especially where the contract provides for possession in advance of the conveyance, does not necessarily cut off a defense against the specific execution of the contract, but where the circumstances and the conduct of the parties show that the existence of an open, visible, physical incumbrance on the property, such as a right of way must have been taken into consideration in fixing its price, the purchaser can neither refuse to complete the purchase, or require an abatement of the price on account of the incumbrance, a covenant of general warranty not being broken by the continued adverse use of the road or right of way.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 499, 537, 541.]

Appeal from Circuit Court, Montgomery County.

Suit by W. T. Riner against Mary E. P. Lester. From the decree denying relief, complainant appeals. Reversed and cause remanded for further proceedings.

M. H. Tompkins, of Cambria, and *Jordan & Roop,* of East Radford, for appellant.

Harless & Calhoun, of Christianburg, for appellee.

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.